IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 554 of 1984
With
CROSS OBJECTION No. 14 of 2007
In
FIRST APPEAL No. 554 of 1984
with
CIVIL APPLICATION NO. 6492 OF 2007
in
FIRST APPEAL No. 554 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARATKUMAR MANILAL SONI & 2 - Appellant(s)
Versus
SURENDRAKUMAR KANTILAL MISTRY - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1 - 3.
MR MC BHATT for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 02/05/2007

COMMON ORAL JUDGMENT

1. Shri Rajni H. Mehta, learned counsel for the appellants no. 1 to 3; Shri M.C. Bhatt, learned counsel for the respondent.

2. The present appeal has been filed by driver, owner and the Insurance Company being aggrieved by the order dated 30.12.1983 passed in M.A.C.P. No. 91 of 1982 by Motor Accident Claims Tribunal No.1 [Main], Ahmedabad, awarding a sum of Rs. 1,35,000/- cost and 6% interest from the date of the petition till realization of the amount; the appellant no. 3 – Oriental Fire and General Insurance Company Limited has been held liable to pay the awarded amount to the claimant. The question relating to maintainability of a joint appeal at the instance of the owner, driver and Insurance Company is no more *res integra*, because, the Supreme Court in matter of **H. S. Ahammed Hussain v. Irfan Ahammed, reported in 2002 AIR 2483** [Supreme Court], has held that joint appeal would be maintainable after deleting the name of the Insurance Company.

3. On being asked that who had spent the amount in

filing the appeal and instructed the counsel to file the appeal, Shri Mehta, learned counsel for the appellants submits that he was engaged by the appellant no.3, who had paid him his professional fee and had also spent some money towards expenses. When this Court required Shri Mehta to inform the Court that whether appellants no. 1 and 2 ever instructed the learned counsel for making a prayer to delete the name of the appellant no.3, Shri Mehta submitted that he never received any such instructions, but as counsel in the case, he thought his duty to make a prayer for deletion of the appellant no.3 so that the appeal continues to be maintainable.

4. So far as the deletion of the appellant no.3 is concerned, it would be without any authority from the appellant no.3 who had virtually engaged counsel and spent money. At least, appellant no.3 should have come forward before the Court and said that his name be deleted. But the learned counsel engaged by the appellant no.3, without any instructions from the

appellant no.3 is proposing deletion of the name of the appellant no.3. I do not know under what authority of law, Shri Mehta is making such prayer. Shri Mehta submits that an officer of the appellant no.3 has filed an affidavit in these proceedings with the prayer that appellant no.3 be joined as party-respondent no.2. Even if such application is to be allowed, the appeal, without instructions from the appellants no. 1 and 2 would not continue to be maintainable. Nobody on behalf of the appellants no. 1 and 2 has said that even in the absence of the appellant no.3, they wish to continue with the appeal and suffer the Cross Objections. However, as Shri Mehta submits that name of the appellant no.3 be deleted, name of the appellant no.3 stand deleted.

5. Further question for consideration now would be if under the insurance policy, the entire brunt of compensation amount is to be suffered by the Insurance Company though owner and driver are held liable, then, whether such owner and driver can be allowed to file an appeal to

create and cause benefit in favour of the Insurance Company. If the appellants are allowed to contest this appeal, then, they are not going to be personally benefited, but the benefit would flow to the Insurance Company. From the award made by the learned Tribunal, it would clearly appear that owner, driver and Insurance Company have been held severally and jointly liable. There is a specific direction by the Tribunal that the amount of claim with 6% interest shall be paid by the Insurance Company. If such amount is to be paid by the Insurance Company, then, appellants no. 1 and 2, in the opinion of this Court would have no cause to challenge such award, because, they have nothing to lose.

6. It is also to be seen that the Insurance Company, if had filed an appeal under Section 110D of the Motor Vehicles Act, 1939, then, limited defences would be available to them and they would not be entitled to challenge the finding recorded on facts, the finding relating to accident, finding relating to income and

finding relating to dependency or application of multiplier. To avoid such inconvenient situation, the Insurance Company is filing joint appeals so that from the mouth of the driver and owner, they could throw challenge to the findings of fact and from the trumpet of the Insurance Company, they could blow horn under Section 96[2] of the old Act. If owner and driver are not to pay a farthing from their pocket, because, the entire amount is to be paid by the Insurance Company, then, the appellants cannot be allowed to contest the litigation for and on behalf of the Insurance Company. What the Insurance Company cannot do directly cannot be allowed to do indirectly. If the Insurance Company cannot get benefits beyond Section 96[2] in its appeal, then, it would not be allowed to take advantage of the situation by getting an appeal filed by the owner and the driver.

7. Though the appeal at the instance of the appellants no.1 and 2, in light of the judgment of the Supreme Court would be maintainable,this Court is not required to interfere in the

matter, because, even if the appeal is allowed in favour of the appellants, benefits would not flow in favour of the appellants, but would go to the respondent. The High Court in its appellate jurisdiction would not be a party to such game and would prefer not to continue with the appeal. The appeal at the instance of the appellants- owner and driver deserves to be dismissed, it is accordingly dismissed with costs of Rs. 5,000/- to be paid by the appellants no. 1 and 2 to the claimant. Consequently, Civil Application No. 6492/07 stands disposed of.

8. After arguing at length, Shri M.C. Bhatt, learned counsel does not press the Cross Objections, those are accordingly dismissed. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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